

SENATE BILL No. 574

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-28-10; IC 34-30-2-60.5.

Synopsis: Health facility third party survey appeal process. Establishes a third party dispute resolution process with a registered nurse review panel that a health facility may use to appeal a finding in the facility's state department of health survey report.

Effective: July 1, 2009.

Dillon

January 20, 2009, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 574

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-28-10-4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 4. (a) The state department shall establish a third**
4 **party dispute resolution process for a health facility to use when a**
5 **health facility appeals a state department finding in the health**
6 **facility's survey report and requests a hearing before the registered**
7 **nurse review panel described in section 5 of this chapter.**

8 (b) A health facility has thirty (30) days after the state
9 department's issuance of a survey report to file an appeal with the
10 state department concerning a finding in the health facility's
11 survey report and request participation in the third party dispute
12 resolution process established under this section.

13 SECTION 2. IC 16-28-10-5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2009]: **Sec. 5. (a) The state department shall use a registered**
16 **nurse review panel in the dispute resolution process established**
17 **under section 4 of this chapter to review an appealed finding in the**



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health facility's survey report.

(b) The registered nurse review panel consists of one (1) attorney and three (3) registered nurses. The attorney member of the panel is chairperson of the panel and may not vote.

(c) The chairperson of the registered nurse review panel shall do the following:

- (1) Act in an advisory capacity for the panel.
- (2) Expedite the selection of the other panel members.
- (3) Convene the panel.
- (4) Expedite the panel's review of the appeal.
- (5) Advise the panel relative to any legal question involved in the review proceeding.
- (6) Prepare the opinion of the panel.

The chairperson may establish a reasonable schedule for submission of evidence to the panel that allows for sufficient time for the parties to present information concerning the appeal to the panel.

SECTION 3. IC 16-28-10-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The chairperson of the registered nurse review panel shall be selected in the following manner:

- (1) A health facility and the state department have fifteen (15) days after the filing of an appeal and request for third party dispute resolution to select a panel chairperson by agreement.
- (2) If an agreement on a panel chairperson cannot be reached under subdivision (1), either party may request the clerk of the supreme court to draw at random a list of five (5) names of attorneys who:
 - (A) are qualified to practice law;
 - (B) are presently on the rolls of the supreme court; and
 - (C) maintain offices in the county in which the health facility that received the survey report and is filing the appeal is located.

(b) Before selecting the random list described in subsection (a)(2), the clerk shall collect a twenty-five dollar (\$25) registered nurse review panel selection fee from the party requesting the formation of the random list.

(c) The health facility that filed the appeal shall strike a name from the random list first and then alternate between the state department and the health facility until one (1) name remains. The remaining attorney shall be the chairperson of the panel, and the state department shall notify the attorney that the attorney is the

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chairperson.

(d) If the health facility or the state department fails to strike a name on the list within five (5) days after receiving notice from the clerk:

(1) the opposing party shall, in writing, request the clerk to strike for the party; and

(2) the clerk shall strike for that party.

If the clerk strikes for the party and only one (1) name remains, the clerk shall notify the chairperson and all parties to the appeal within five (5) days.

(e) The chairperson shall:

(1) send written acknowledgment of the chairperson appointment; or

(2) show good cause under subsection (f) for relief from serving as chairperson;

not later than fifteen (15) days after being notified of the appointment under this section.

(f) To show good cause for relief from serving as chairperson, the attorney selected as chairperson of a registered nurse review panel shall serve an affidavit upon the clerk of the supreme court. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The clerk may excuse the attorney from serving. The attorney shall notify all parties and the parties shall select a new chairperson.

SECTION 4. IC 16-28-10-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Except as provided in subsection (c), a registered nurse who is licensed under IC 25-23 may be selected as a member of the registered nurse review panel.

(b) The health facility and the state department each have the right to select one (1) registered nurse, and upon selection, the two (2) registered nurses shall select the third registered nurse panelist not later than fifteen (15) days after the two (2) registered nurses are selected. If the third panelist is not selected within the required time frame, the chairperson shall make the selection and notify the parties.

(c) A registered nurse who:

(1) is employed by; or

(2) was previously employed by;

either party in the action may not serve as a panelist on the registered nurse review panel.

(d) Not later than fifteen (15) days after the chairperson is

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selected, both parties shall select a registered nurse and shall notify the other party and the chairperson of the selection. If a party fails to make a selection within the required time, the chairperson shall select a registered nurse for the party.

(e) A party may challenge the selection of a panel member in writing not later than ten (10) days after the selection of the panel member. The party whose appointee was challenged shall select another panelist. After two (2) challenges are made and submitted, the chairperson shall compile a panel consisting of three (3) qualified panelists not later than ten (10) days after the second challenge. Each side may then strike one (1) panelist, and the remaining panelist shall serve on the panel.

(f) A member of a registered nurse review panel who is selected under this section shall serve unless:

- (1) the parties by agreement excuse the panelist; or
- (2) the panelist is excused as provided in subsection (g) for good cause.

(g) To show good cause for relief from showing, the registered nurse member of the panel must serve an affidavit upon the panel chairperson. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The chairperson may excuse the member from serving and notify the parties.

SECTION 5. IC 16-28-10-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The registered nurse review panel shall give an expert opinion not later than one hundred eighty (180) days after the selection of the last member of the initial panel. However, if:

- (1) the chairperson or another member of the panel is removed; and
- (2) the new member is selected to replace the removed member more than ninety (90) days after the last member of the initial panel is selected;

the panel has ninety (90) days after the selection of the new member to give an expert opinion.

(b) If the panel has not given an opinion within the time allowed under subsection (a), the panel shall submit a report to the parties stating the reasons for the delay.

(c) A party, an attorney, or a panelist who fails to act as required by this chapter without good cause shown is subject to mandate or appropriate sanctions upon application to the court having jurisdiction.

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(d) The chairperson may remove a member of the panel if the chairperson determines that the member is not fulfilling the duties imposed upon the panel members by this chapter. If a member is removed under this subsection, a new member shall be selected as specified in this chapter.

SECTION 6. IC 16-28-10-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) The parties to the dispute resolution process shall submit evidence in written form to the registered nurse review panel in a timely manner.

(b) Depositions of parties and witnesses may be taken before the convening of the panel.

(c) The chairperson shall ensure that, before the panel gives the panel's expert opinion, each panel member has the opportunity to review every item of evidence submitted by the parties.

(d) Before considering any evidence or deliberating with other panel members, each panel member shall take an oath in writing that the member:

- (1) will consider all the evidence submitted by the parties;
- (2) will render an opinion without bias and based on the evidence submitted; and
- (3) will not communicate with any party or representative of a party before rendering an opinion.

(e) A:

- (1) party;
- (2) party's agent;
- (3) party's attorney; or
- (4) party's insurance carrier;

may not communicate with any member of the panel, except as authorized by law, before the panel gives the panel's expert opinion under this chapter.

(f) Either party, after the submission of evidence and after giving ten (10) days notice to the other side, has the right to convene the panel at a time and place agreeable to the members of the panel. Either party may question the panel concerning any matters relevant to the issues to be decided by the panel before the panel issues the panel's report. The chairperson shall preside at a meeting.

(g) The panel has the right and the duty to request all necessary information. Both parties shall have full access to any material submitted to the panel.

SECTION 7. IC 16-28-10-10 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 10. (a) The registered nurse review panel has the sole duty to make an expert opinion concerning whether the evidence supports the health facility survey report finding that is being appealed.**

(b) The panel shall, not later than thirty (30) days after reviewing all the evidence and after hearing from both parties, give one (1) or more of the following expert opinions in writing and signed by the panelists:

(1) The evidence supports the conclusion that the appealed findings made by the state department in the health facility's survey report were warranted and appropriate.

(2) The evidence supports the conclusion that the appealed findings made by the state department in the health facility's survey report were not warranted or not appropriate.

(c) A panelist has absolute immunity from civil liability for all communications, findings, opinions, and conclusions made in the course and the scope of duties prescribed in this chapter.

(d) Each registered nurse panelist on the registered nurse review panel is entitled to be paid:

(1) not more than three hundred fifty dollars (\$350) for all work performed as a member of the panel; and

(2) reasonable travel expenses.

(e) The chairperson of the panel is entitled to be paid:

(1) at the rate of two hundred fifty dollars (\$250) per diem, not to exceed two thousand dollars (\$2,000); and

(2) reasonable travel expenses.

(f) The chairperson shall keep a record of the time and expenses of all members of the panel. The record shall be submitted to the parties for payment with the panel's report.

(g) Fees of the panel, including travel expenses and other expenses of the review, shall be paid by the side for whom the panel finds against. If there is no majority opinion, each side shall pay fifty percent (50%) of the cost.

(h) The chairperson shall submit a copy of the panel's report to each party by registered or certified mail not later than five (5) days after the panel completes the panel's report.

SECTION 8. IC 34-30-2-60.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 60.5. IC 16-28-10-10 (Concerning panelists serving on a registered nurse review panel).**

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